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1 UNITED STATES DISTRICT COURT
2 SOUTHERN DISTRICT OF NEW YORK

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3 UNITED STATES OF AMERICA,

4 v.

16 CR 279 (WHP)

5 ROWEN SEIBEL,

6 Defendant.

7 -----x

8 New York, N.Y.

9 April 18, 2016

11:10 a.m.

10 Before:

11 HON. HENRY B. PITMAN,

12 Magistrate Judge

13
14 APPEARANCES

15 PREET BHARARA,

16 United States Attorney for the
Southern District of New York

17 ROBIN W. MOREY

Assistant United States Attorney

18 ROBERT S. FINK

19 MICHAEL SARDAR

Attorneys for Defendant

20 ALSO PRESENT:

21 PAUL WAGNER, Internal Revenue Service

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1 THE DEPUTY CLERK: United States against Rowen Seibel.
2 Counsel, please state your names for the record.

3 MS. MOREY: Good morning, your Honor. Robin Morey,
4 for the government. With me at counsel table is Special Agent
5 Paul Wagner, of the Internal Revenue Service.

6 MR. FINK: Robert Fink, for the defense, and --

7 MR. SARDAR: Michael Sardar.

8 THE COURT: One preliminary matter: All attorneys in
9 the well of the court, if they have a cell phone should turn it
10 off at this point, not put it on silent, not put it on vibrate
11 but turn it off, so we can all give our undivided attention to
12 the matter at hand.

13 I understand there's an application on behalf of
14 Mr. Seibel?

15 MR. FINK: Yes, your Honor.

16 THE COURT: And the application is?

17 MR. FINK: It is to waive an indictment. We're going
18 to plead to an information, and the plea will be guilty.

19 THE COURT: Okay.

20 I guess the first order of business will be for
21 Mr. Hampton to conduct the waiver of indictment allocution.

22 THE DEPUTY CLERK: You are Rowen Seibel?

23 THE DEFENDANT: Yes, I am.

24 THE DEPUTY CLERK: Have you signed this waiver of
25 indictment?

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1 THE DEFENDANT: Yes, sir.

2 THE DEPUTY CLERK: Before you signed it, did you
3 discuss it with your attorney?

4 THE DEFENDANT: Yes, I did.

5 THE DEPUTY CLERK: Did your attorney explain it to
6 you?

7 THE DEFENDANT: He did.

8 THE DEPUTY CLERK: Do you understand what you are
9 doing?

10 THE DEFENDANT: I do.

11 THE DEPUTY CLERK: Do you understand that you are
12 under no obligation to waive indictment?

13 THE DEFENDANT: Yes, sir.

14 THE DEPUTY CLERK: Do you understand that if you do
15 not waive indictment, if the government wants to prosecute you,
16 they will have to present this case to a grand jury, which may
17 or may not indict you?

18 THE DEFENDANT: Yes, sir.

19 THE DEPUTY CLERK: Do you understand that by signing
20 the waiver of indictment, you have given up your right to have
21 this case presented to a grand jury?

22 THE DEFENDANT: Yes, sir.

23 THE DEPUTY CLERK: Do you understand what a grand jury
24 is?

25 THE DEFENDANT: Yes, sir.

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1 THE DEPUTY CLERK: Have you seen a copy of the
2 information?

3 THE DEFENDANT: I believe so, sir, yes.

4 THE DEPUTY CLERK: Do you want to take a look at it to
5 make sure?

6 THE DEFENDANT: Oh -- yes, yes.

7 THE DEPUTY CLERK: Do you waive its public reading?

8 THE DEFENDANT: Yes, sir.

9 THE COURT: Let me ask Mr. Hampton to place two
10 documents before Mr. Seibel. There's a one-page document
11 entitled "Consent To Proceed Before a Magistrate Judge On A
12 Felony Plea Allocution" and a document in the form of a letter
13 marked Court Exhibit 1.

14 Mr. Seibel, two documents have been placed before you.
15 I want to first discuss with you the one-page document entitled
16 "Consent To Proceed Before A United States Magistrate Judge On
17 A Felony Plea Allocution."

18 Do you see the one-page document?

19 THE DEFENDANT: Yes, sir.

20 THE COURT: Does your signature appear on the bottom
21 of it?

22 THE DEFENDANT: Yes, your Honor.

23 THE COURT: Did you read it before you signed it?

24 THE DEFENDANT: Yes.

25 THE COURT: Did you discuss it with your attorney

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1 before you signed it?

2 THE DEFENDANT: Yes, sir.

3 THE COURT: Do you understand that you have the right
4 to have your plea taken by a district court judge instead of a
5 magistrate judge? Do you understand you have that right?

6 THE DEFENDANT: Yes, sir.

7 THE COURT: Do you understand that by signing that
8 piece of paper, you're giving up your right to have your plea
9 taken by a district court judge and consenting to have it taken
10 by a magistrate judge? Do you understand that's the effect of
11 your signature on that piece of paper?

12 THE DEFENDANT: Yes, sir.

13 THE COURT: Has anyone made any promises to you or has
14 anyone made any threats to you or has anyone used any force
15 against you to induce you to consent to proceed before a
16 magistrate judge?

17 THE DEFENDANT: No, sir.

18 THE COURT: There is a second document before you in
19 the form of a letter marked Court Exhibit 1.

20 Do you see Court Exhibit 1?

21 THE DEFENDANT: Yes, sir.

22 THE COURT: Does your signature appear on the last
23 page of Court Exhibit 1?

24 THE DEFENDANT: Yes, sir.

25 THE COURT: Did you read Court Exhibit 1 before you

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1 signed it?

2 THE DEFENDANT: Yes, sir.

3 THE COURT: Did you discuss Court Exhibit 1 with your
4 attorneys before you signed it?

5 THE DEFENDANT: Yes, sir.

6 THE COURT: And is Court Exhibit 1 an agreement with
7 the government concerning your plea this morning?

8 THE DEFENDANT: I believe so, sir, yes.

9 THE COURT: Do you want to take a look to make sure it
10 is?

11 THE DEFENDANT: Yes.

12 THE COURT: It is?

13 THE DEFENDANT: Yes.

14 THE COURT: Okay. Thank you.

15 Mr. Hampton has a copy of the information which is
16 marked as Court Exhibit 2, which I'm going to ask him to place
17 before Mr. Seibel at this time.

18 I'm also going to ask Mr. Hampton to please place
19 Mr. Seibel under oath at this time.

20 (Defendant sworn)

21 THE COURT: Mr. Seibel, you've now been placed under
22 oath. If you make a false statement during these proceedings,
23 you can be prosecuted for perjury. Do you understand that?

24 THE DEFENDANT: Yes, sir.

25 THE COURT: Mr. Seibel, the law requires that I ask

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1 you a number of questions to ensure that your plea is knowing
2 and voluntary in all respects, to ensure that you understand
3 what you're doing here this morning, and to ensure that you
4 understand the consequences of what you're doing. If you don't
5 understand any question that I ask you, tell me that you don't
6 understand the question and I'll either try to clarify the
7 question or give you a chance to speak with your attorneys so
8 that you understand exactly what I'm asking.

9 In addition, if at any time during these proceedings,
10 you want to speak with your attorneys for any reason
11 whatsoever, just tell me that you want to speak with your
12 attorneys and I'll give you the chance to speak with them
13 privately. Do you understand that?

14 THE DEFENDANT: Yes, sir.

15 THE COURT: Please state your full name.

16 THE DEFENDANT: Rowen Seibel.

17 THE COURT: How old are you, sir?

18 THE DEFENDANT: I'm 34.

19 THE COURT: How far did you get in school?

20 THE DEFENDANT: College graduate.

21 THE COURT: Have you recently been treated for any
22 type of mental illness?

23 THE DEFENDANT: No, sir.

24 THE COURT: Have you recently been treated for drug
25 addiction of any kind?

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1 THE DEFENDANT: No, sir.

2 THE COURT: Have you recently been treated for
3 alcoholism?

4 THE DEFENDANT: No, sir.

5 THE COURT: Have you had any beer, wine or liquor
6 within the last 24 hours?

7 THE DEFENDANT: No.

8 THE COURT: Have you taken any kind of drugs or
9 medication, legal or illegal, within the last two days?

10 THE DEFENDANT: No, sir.

11 THE COURT: Are you currently under the care of any
12 kind of doctor or other health care provider?

13 THE DEFENDANT: No.

14 THE COURT: In general, do you feel clearheaded today
15 and able to understand what's going on around you?

16 THE DEFENDANT: Yes, sir.

17 THE COURT: Are either the government or defense
18 counsel aware of any physical, psychological or emotional
19 condition that might prevent Mr. Seibel from entering a guilty
20 plea today?

21 MS. MOREY: The government is not.

22 MR. FINK: No, your Honor.

23 THE COURT: Mr. Seibel, have you received a copy of
24 the information which has been filed against you and has been
25 marked as Court Exhibit 2?

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1 THE DEFENDANT: Yes, sir.

2 THE COURT: Have you had a chance to read the
3 information and to discuss it with your attorneys, Mr. Fink and
4 Mr. Sardar?

5 THE DEFENDANT: I have, sir.

6 THE COURT: Are you generally satisfied with their
7 representation of you in this case and with the advice that
8 they have given to you?

9 THE DEFENDANT: Yes, sir.

10 THE COURT: Is it your intention here to plead guilty
11 to Count One of that information?

12 THE DEFENDANT: Yes, sir.

13 THE COURT: I want to discuss with you briefly the
14 nature of the charge against you, the elements the government
15 would have to prove at trial beyond a reasonable doubt to
16 establish your guilt, and the penalties you face if your plea
17 is accepted.

18 Do you understand that Count One of the information
19 charges you with violating Title 26, United States Code,
20 Section 7212? In general terms, that statute makes it a crime
21 to corruptly attempt to obstruct or impede the administration
22 of the Internal Revenue laws. Do you understand that's the
23 nature of the charges against you?

24 THE DEFENDANT: Yes, sir.

25 THE COURT: Do you understand that in order to

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1 establish your guilt at trial, the government would have to
2 prove the following elements beyond a reasonable doubt: First,
3 that you acted corruptly; and, second, that you acted with the
4 intent to impede or obstruct the due administration of the
5 Internal Revenue laws? Do you understand those are the two
6 elements the government would have to prove at trial to
7 establish your guilt?

8 THE DEFENDANT: Yes, sir.

9 THE COURT: Do you understand that if your plea is
10 accepted, you face a maximum sentence of three years'
11 imprisonment, a maximum term of supervised release of one year,
12 a maximum fine of the greatest of \$250,000 or twice the gross
13 pecuniary gain derived from the offense or twice the gross
14 pecuniary loss to persons other than yourself, a special
15 assessment of \$100, and that in addition to the foregoing the
16 Court must also impose an order of restitution directing that
17 you pay back to the government any ill-gotten gain or anything
18 you may have purchased with the proceeds of your criminal
19 conduct? Do you understand those are the sentences or the
20 punishments you face if your plea is accepted?

21 THE DEFENDANT: Yes, sir.

22 THE COURT: Do you understand that under the
23 Sentencing Reform Act of 1984, the United States Sentencing
24 Commission has issued advisory guidelines for judges to consult
25 in imposing sentences in criminal cases? Do you understand

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1 that?

2 THE DEFENDANT: Yes, sir.

3 THE COURT: Have you and your attorney discussed how
4 the guidelines might apply in your case?

5 THE DEFENDANT: Yes, sir.

6 THE COURT: And you understand that the Court will not
7 be able to determine the appropriate sentence for your case
8 until a document called a presentence report has been prepared
9 and until both you and the government have had the opportunity
10 to review the report and make any challenges you have to the
11 facts in the report and to the guideline range recommended by
12 the probation department? Do you understand that?

13 THE DEFENDANT: Yes, sir.

14 THE COURT: And do you understand that the guideline
15 range found to apply in your case may turn out to be different
16 from any range you discussed with your attorney or any range
17 you've agreed to with the government? Do you understand that?

18 THE DEFENDANT: Yes, sir.

19 THE COURT: And you understand that after your
20 guideline range has been determined, the Court has the
21 authority to depart from the guidelines and to impose a
22 sentence that's either more severe or less severe than the
23 sentence called for by the guidelines? Do you understand that?

24 THE DEFENDANT: Yes, sir.

25 THE COURT: Do you understand that parole has been

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1 abolished in the federal system and that if you are sentenced
2 to a term of imprisonment, you will not be released on parole?
3 Do you understand that?

4 THE DEFENDANT: Yes, sir.

5 THE COURT: Do you understand that if supervised
6 release is imposed as part of your sentence and you violate any
7 term of your supervised release, you can be returned to jail
8 for the full term of supervised release, with no credit being
9 given for the time spent on release up to the date of the
10 violation? Do you understand that?

11 THE DEFENDANT: Yes, sir.

12 THE COURT: Do you understand that as part of your
13 agreement with the government, you're stipulating to a
14 sentencing range of 12 to 18 months? Do you understand that?

15 THE DEFENDANT: Yes, sir.

16 THE COURT: Do you understand that you're giving up
17 any right you might otherwise have to challenge the sentence
18 that's imposed upon you so long as the sentence is not greater
19 than 18 months? Do you understand that?

20 THE DEFENDANT: Yes, sir.

21 THE COURT: Do you understand that if the Court were
22 to impose a sentence of less than 12 months, the government
23 could appeal that sentence and seek a sentence within the
24 agreed range of 12 to 18 months? Do you understand that?

25 THE DEFENDANT: Yes, sir.

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1 THE COURT: Do you understand that your agreement with
2 the government concerning sentencing is not binding on the
3 Court and the Court retains the power to impose any legal
4 sentence, including a sentence of up to three years'
5 imprisonment? Do you understand that?

6 THE DEFENDANT: Yes, sir.

7 THE COURT: Do you understand that if the Court
8 imposed a sentence greater than 18 months, you would have the
9 right to appeal the sentence and to seek a sentence within the
10 range of 12 to 18 months, but you would not be permitted to
11 withdraw your guilty plea simply because the sentence was
12 greater than you expected? Do you understand that?

13 THE DEFENDANT: Yes, sir.

14 THE COURT: Mr. Seibel, a plea to a felony can also
15 have immigration consequences for individuals who are not U.S.
16 citizens.

17 Do you understand that if you're not a United States
18 citizen, another consequence of your plea is that at the
19 conclusion of your sentence you will be deported or removed
20 from the United States and prohibited from ever reentering the
21 United States? Do you understand that's another consequence of
22 your plea but only if you're not a U.S. citizen? Do you
23 understand that?

24 THE DEFENDANT: Yes, sir.

25 THE COURT: I want to discuss with you the nature of

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1 some of the rights you're giving up by pleading guilty. Do you
2 understand that you have the right to plead not guilty to the
3 charges against you and you have the right to persist in that
4 plea at all stages of the proceedings against you? Do you
5 understand you have those rights?

6 THE DEFENDANT: Yes, sir.

7 THE COURT: Do you understand that if you chose to
8 plead not guilty, you'd have the right to the assistance of
9 counsel at all stages of the proceedings against you and the
10 right to have counsel appointed for you if you could not afford
11 counsel? Do you understand you'd have those rights?

12 THE DEFENDANT: Yes, sir.

13 THE COURT: Do you understand if you chose to plead
14 not guilty, you'd have the right to a trial by a jury? At a
15 trial, you'd be presumed innocent and the government would have
16 to prove your guilt beyond a reasonable doubt. At a trial,
17 you'd have the right to the assistance of counsel, the right to
18 have counsel appointed if you could not afford counsel; you
19 would have the right to see and hear all the witnesses against
20 you and the right to have those witnesses cross-examined or
21 questioned in your own defense. At a trial, you'd have the
22 right to testify and the right to offer evidence in your
23 defense.

24 Conversely, you'd also have the right to decline to
25 testify or to decline to offer evidence; and if you chose not

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1 to testify or chose not to offer evidence, those facts could
2 not be used against you.

3 Finally, at a trial, you'd have the right to the
4 issuance of compulsory process to compel witnesses to come to
5 court and give testimony in your behalf.

6 Do you understand you'd have all those rights if you
7 chose to plead not guilty and go to trial?

8 THE DEFENDANT: Yes, sir.

9 THE COURT: And you understand that by entering a plea
10 of guilty, if the plea is accepted, there will be no trial and
11 you'll be giving up your right to a trial as well as all the
12 other rights associated with a trial that I just described to
13 you? Do you understand you're giving up all those rights?

14 THE DEFENDANT: Yes, sir.

15 THE COURT: Apart from the agreements that are set
16 forth in Court Exhibit 1, the letter agreement that you
17 identified at the outset of these proceedings, has anyone made
18 any other promises to you or has anyone made any threats to you
19 or has anyone used any force against you, to induce you to
20 plead guilty?

21 THE DEFENDANT: No, sir.

22 THE COURT: Are you pleading guilty because you are in
23 fact guilty?

24 THE DEFENDANT: Yes, sir.

25 THE COURT: Can you tell us, please, what it is you

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1 did that makes you guilty of Count One of the offense charged
2 in the information before you that's marked as Court Exhibit 2?

3 THE DEFENDANT: On my IRS Form 1040 for the year 2008,
4 where it asks "Did you have a financial interest in or signator
5 authority over a financial account located in a foreign
6 country?" I corruptly answered the question "No" when I knew
7 that answer was incorrect. At the time, I knew that my mother
8 had placed her monies into a foreign account held under my
9 name, with her having the power of attorney over the foreign
10 account.

11 I did this in order to aid my mother in failing to
12 make payments of taxes related to that account. This was done
13 in Manhattan, which is within the Southern District of New
14 York.

15 THE COURT: Does the government believe any further
16 inquiry is necessary concerning the facts of the offense?

17 MS. MOREY: No, your Honor.

18 THE COURT: Does the government represent that it has
19 facts in its possession to prove Mr. Seibel's guilt beyond a
20 reasonable doubt?

21 MS. MOREY: Yes, we do.

22 THE COURT: Mr. Seibel, how do you plead to Count One
23 of the information that's before you and marked as Court
24 Exhibit 2, guilty or not guilty?

25 THE DEFENDANT: Guilty.

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1 THE COURT: Does the government believe any further
2 inquiry is necessary concerning any matter?

3 MS. MOREY: No, your Honor.

4 THE COURT: Mr. Fink, do you believe any further
5 inquiry is necessary concerning any matter?

6 MR. FINK: No, your Honor.

7 THE COURT: Based on his appearance, his physical
8 demeanor and his answers to all the foregoing questions, I find
9 that the defendant is fully competent and capable of entering
10 an informed and voluntary plea, that he is aware of the nature
11 of the charges and the consequences of the plea, and that the
12 plea is knowing and voluntary and supported by an independent
13 basis in fact as to each of the essential elements of the
14 offense. I therefore accept the plea and recommend that the
15 district court accept the plea.

16 Has this matter been assigned to a judge yet?

17 MS. MOREY: Yes; to Judge Pauley. And Judge Pauley
18 has set a sentencing date of August 19th at 2:30 p.m.,
19 August 19th, 2016. 2:30 p.m.

20 THE COURT: I'm sorry, is there something else? Did
21 you want to add something else?

22 MS. MOREY: No, no, sir.

23 THE COURT: Sentencing will proceed on August 19th at
24 2:30 p.m.

25 A presentence report will be ordered. We will mark

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1 the form that defense counsel should be present for the
2 interview.

3 I'm going to direct that defense counsel promptly
4 contact the probation department so that the presentence
5 interview can be scheduled within the next 14 days, and I'm
6 also going to direct the government to submit the prosecution
7 case summary to the probation department within the next 14
8 days.

9 I understand this is the defendant's initial
10 appearance?

11 MS. MOREY: Yes, it is, your Honor, so we would need
12 to set bail and --

13 THE COURT: Has he been to the marshals yet for
14 fingerprinting and processing?

15 MR. WAGNER: He has not.

16 THE COURT: I'm also going to direct the defendant
17 immediately after today's proceeding report to the marshals for
18 fingerprinting and processing.

19 And that takes us to the question of bail. Let me
20 hear from the government first and then I'll hear from defense
21 counsel.

22 MS. MOREY: The defense counsel can confirm this, but
23 we've discussed bail and we have a proposed package for your
24 consideration.

25 THE COURT: Okay.

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1 MS. MOREY: A \$2,000 personal recognizance bond,
2 signed only by the client, after which he can be released;
3 surrender of his passport to pretrial -- I believe he may have
4 already done that or he will do it today.

5 MR. SARDAR: Yes.

6 MS. MOREY: -- the bail limits be extended to the
7 Continental United States because he has business interests
8 across the country. No pretrial supervision or no drug
9 testing.

10 THE COURT: Do I understand the bail conditions to be
11 a \$2,000 PRB, travel limited to the Continental United States,
12 surrender of travel documents, no new applications? Is that
13 right, government?

14 MS. MOREY: Yes, your Honor.

15 THE COURT: Mr. Fink, is that correct?

16 MR. FINK: Yes, your Honor.

17 THE COURT: Let me just ask one question. I'm looking
18 at the pretrial services report. I take it both sides have the
19 pretrial services report.

20 MS. MOREY: No, actually, I have not reviewed it.

21 THE COURT: Do you have it, Mr. Fink?

22 MR. FINK: No, your Honor.

23 THE COURT: Well, I'll give you my copy to take a look
24 at.

25 Pretrial services reports that under -- there's a

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1 section that deals with the defendant's monthly cash flow and
2 it indicates he's got an expense of \$200,000 a month for
3 groceries and supplies.

4 Mr. Hampton, hand this to the government and then
5 maybe hand it to Mr. Fink to take a look at.

6 MR. FINK: That's a mistake, your Honor.

7 THE COURT: I presumed it is.

8 What should the correct number be?

9 THE DEFENDANT: I think I said 2,000.

10 THE COURT: That makes much more sense. Okay, all
11 right.

12 I will approve the bail package to which the parties
13 have agreed, which is a \$2,000 PRB, travel limited to the
14 Continental United States, surrender of all travel documents,
15 no new applications.

16 Mr. Seibel, bail terms have been set for you and
17 you're going to be released today. I want to advise you that
18 if you fail to appear in court whenever you're required to, a
19 warrant will issue for your arrest, you will owe the government
20 \$2,000, and you can be charged with the offense of
21 bail-jumping. You could be separately prosecuted and
22 separately sentenced for bail-jumping, regardless of the
23 outcome of the sentence imposed in connection with the tax
24 matter. Do you understand that?

25 THE DEFENDANT: Yes, sir.

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1 MS. MOREY: Your Honor, you just said he would have to
2 pay \$2,000 to the United States. Did you mean 200,000?

3 THE COURT: I thought you told me the PRB was \$2,000.

4 MS. MOREY: Oh, then I misspoke. It's \$200,000 PRB.

5 THE COURT: Is that correct, Mr. Fink? It's \$200,000
6 PRB?

7 MR. FINK: It doesn't matter, your Honor. We're not
8 fleeing.

9 THE COURT: All right, so the agreement on the bail
10 terms that was a \$200,000 PRB, correct?

11 MR. FINK: That's fine with us.

12 THE COURT: Yes?

13 MR. FINK: It's fine with us, yes.

14 THE COURT: Okay.

15 I thought you said \$2,000.

16 MS. MOREY: I am known for misspeaking --

17 THE COURT: Okay, all right.

18 MS. MOREY: -- numbers.

19 THE COURT: Anything else from the government?

20 MS. MOREY: No, not from the government.

21 THE COURT: Okay. Mr. Fink, anything else?

22 MR. FINK: No, your Honor.

23 THE COURT: Okay. Thank you, all.

24 (Adjourned)
25